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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Interconnection and Resale Obligations Pertaining
to Commercial Mobile Radio Services

CC Docket No. 94-54

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COMMENTS OF SPRINT SPECTRUM L.P. d/b/a SPRINT PCS

Pursuant to the Third Notice of Proposed Rulemaking released by the Federal Communications Commission ("FCC" or "Commission") on August 13, 1996 in the above-captioned proceeding,¹ Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS") submits the following comments.

I. INTRODUCTION

The Commission seeks comment on whether automatic roaming regulations are required to ensure competitive development of the CMRS industry. Specifically, the Commission wishes to know "whether, during the broadband PCS buildout period, market conditions may create economic incentives for certain CMRS carriers to discriminate unreasonably in the provision of roaming, or to otherwise engage in unjust or unreasonable practices with regard to roaming."²

¹ See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Second Report and Order and Third Notice of Proposed Rulemaking, CC Docket No. 94-54, FCC 96-284 (Aug. 15, 1996) ("NPRM").

² *Id.* at ¶ 16.

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The simple answer to this question is that no one knows. The personal communications service ("PCS") industry is in a very early stage of development and there is insufficient information on "market conditions" to allow the FCC to determine accurately whether new rules are necessary to prevent discriminatory or anti-competitive conduct on the part of established CMRS providers. Imposition of mandatory roaming regulations, absent evidence of anti-competitive behavior by wireless providers, will compromise both the Commission's general policy of allowing market forces, rather than regulation, to shape the wireless industry,³ as well as Congress' goal of creating a "pro-competitive, deregulatory national policy framework" for the telecommunications industry.⁴ The Commission should continue to monitor the development of the CMRS marketplace, but should refrain, at least for now, from mandating automatic roaming.

II. IMPOSITION OF AN AUTOMATIC ROAMING REQUIREMENT IS PREMATURE

A. The PCS Marketplace Is Insufficiently Developed To Allow An Accurate Determination Of The Overall Roaming Needs Of CMRS Providers And Consumers

In its Second Notice of Proposed Rulemaking in this proceeding,⁵ the Commission concluded that there was insufficient information to warrant mandatory roaming

³ See, e.g., *Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, First Report and Order and Further Notice of Proposed Rule Making, 11 FCC Rcd 8965 (1996) (permitting fixed wireless service offerings by commercial mobile radio service licensees); *Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Service to Subscribers*, 11 FCC Rcd 6610 (1996) (permitting interactive video and data service licensees to offer mobile as well as fixed services).

⁴ See *Conference Report On S. 652, Telecommunications Act Of 1996*, 142 Cong. Rec. H1078, H1107 (Jan. 31, 1996).

⁵ See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Second Notice of Proposed Rulemaking, 10 FCC Rcd 10666 (1995) ("1995 NPRM").

requirements for the emerging PCS industry.⁶ Significantly, in explaining its earlier decision in the instant NPRM, the Commission noted that “[s]ince the record predated the operation of nearly all broadband PCS systems, it could not demonstrate the failure of the market to ensure the widespread availability of automatic roaming arrangements.”⁷

Despite the significant progress of the PCS industry in the last 12 months, it still has not experienced sufficient activity to demonstrate that the market has failed to provide automatic roaming opportunities and that the Commission must, therefore, impose an automatic roaming requirement. First, there are very few operational broadband PCS systems,⁸ and hundreds of broadband PCS licenses have yet to be assigned. Second, even after the Commission has assigned all PCS licenses, the roaming needs of individual licensees will remain uncertain for a time, particularly if licensees are permitted to enter into partitioning and disaggregation agreements with other CMRS providers.⁹ Many licensees may not even approach other service providers for months to discuss possible roaming arrangements.

In addition to the current uncertainties surrounding the future structure of the CMRS marketplace, there are also uncertainties regarding the availability of the technology necessary for carrier-to-carrier roaming. Questions remain regarding the timing and

⁶ *Id.* at 10693-4; *NPRM* at ¶ 15 (“At that point, our initial broadband PCS auctions had just been conducted and licenses were not yet issued. The business plans of companies entering the market for broadband PCS services were in their formative stages. No dual band or dual mode phones were yet available, and no broadband PCS provider had experience trying to negotiate a roaming agreement.”).

⁷ *NPRM* at ¶ 15.

⁸ To Sprint PCS’s knowledge, there are only three PCS licensees with operational systems.

⁹ The Commission has recently proposed to significantly expand the circumstances under which a licensee may partition or disaggregate its PCS license. *See Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees*, Notice of Proposed Rulemaking, WT Docket No. 96-148 (July 15, 1996).

availability of the dual-mode handsets necessary for PCS-to-cellular roaming.¹⁰ Without the dual-mode handsets, automatic roaming will not be possible between PCS and cellular systems, regardless of Commission regulation.

B. Absent Evidence of Discrimination or Anti-Competitive Conduct With Respect to Roaming, The Commission Should Continue Its Policy of Allowing Market Forces Rather Than Regulation To Drive the Development of CMRS Services

The Commission requests comment on “whether and how rules governing automatic roaming could be at odds with [its] general policy of allowing market forces, rather than regulation, to shape the development of wireless technologies.”¹¹ It further notes that its “goal would be to make any rule [it] adopts consistent with such a policy.”¹² Until market forces have sufficiently developed and demonstrate that some competitors can exercise market power, FCC imposition of roaming regulations would be inconsistent with FCC policy. Sprint PCS would support Commission regulation of roaming when, but only when, there is evidence that CMRS providers generally are denying competitors’ requests for roaming agreements. In the 1995 NPRM, the Commission described the circumstances under which its public interest duty would require such action.

[W]e stand ready to intercede should the parties be unable to reach reasonable private agreements and will closely scrutinize any exercise of market power or engagement in other forms of anti-competitive conduct designed to raise rivals’ costs and

¹⁰ Dual-Mode handsets for providers using the Global Systems for Mobile Communications (“GSM”) standard, for example, are not expected until next summer. *See Proponents at PCS ‘96 Push GSM to Highlight Technology’s Growth, Capabilities*, Communications Daily (September 20, 1996).

¹¹ *NPRM* at ¶ 26.

¹² *Id.*

thwart competition, or to charge unjust or unreasonable prices for roaming service.¹³

Absent these circumstances, however, departure from the Commission's general competitive, deregulatory approach to wireless is unwarranted.

There is simply no evidence at this juncture to warrant regulation in this area. In fact, the evidence to date suggests that the CMRS market will be robustly competitive and will require little, if any, regulatory oversight. The high prices paid by licensees for their PCS licenses, for example, will create a strong incentive to use those licenses in the most efficient and productive manner. Also, automatic roaming represents a significant additional revenue stream for PCS providers. Finally, to the extent that consumers deem automatic roaming a desirable feature, providers will enter into such agreements regardless of FCC action on the issue.

Automatic roaming likely will develop in the broader CMRS marketplace, just as it did in the cellular industry, without an automatic roaming rule. The Commission has never been persuaded that automatic roaming needed to be regulated. The FCC has fashioned its CMRS rules to ensure multiple competitors in each market. If automatic roaming rules were unnecessary to promote roaming agreements among cellular carriers, they should be even less necessary for a fully competitive marketplace. CMRS providers have a strong economic interest in selling services to roamers in their market and in selling the ability to roam to their own customers.¹⁴ Commissioner Chong summarized the effect of these market forces on roaming in the cellular industry in her separate statement on the NPRM.

¹³ 1995 NPRM at 10694.

¹⁴ See e.g. *Comments of BellSouth to 1995 NPRM* at 5; *Comments of Bell Atlantic Mobile Systems to 1995 NPRM* at 8 ("carriers demonstrate that it is in their economic interest to enter into roaming agreements. . . . Roaming prices paid by cellular customers have been steadily declining. These facts indicate a functioning competitive market in no need of government intrusion.").

Today, the cellular industry has matured, and customer demand has resulted in roaming being widely available to cellular subscribers. Most cellular carriers have roaming agreements with cellular carriers in other markets that permit their customers to automatically roam in most parts of the nation. ... I note that all of these advancements in roaming occurred without a Commission rule or regulation requiring cellular carriers to enter into automatic roaming agreements with each other.¹⁵

At present, there is no evidence to suggest that market forces in the broader CMRS market will not have similar effects and bring similar benefits to consumers of PCS and other wireless services.¹⁶

Moreover, there is evidence now that PCS providers will be able to successfully negotiate automatic roaming agreements without an automatic roaming rule.¹⁷ Nine PCS licensees using the GSM PCS standard recently announced that they expect to have roaming agreements by year-end.¹⁸ One of the nine, Pacific Bell Mobile Services, also announced that it had already signed four such agreements.¹⁹ Thus, there is every indication that FCC regulation is unnecessary to ensure automatic roaming.

¹⁵ *Separate Statement of Commissioner Rachelle B. Chong to the NPRM at 1.*

¹⁶ Some carriers have expressed the concern that incumbent cellular providers will deny reasonable roaming requests as a delaying tactic against the introduction of competing providers. *See e.g.* Letter from Mark J. Golden, PCIA, to Michael Wack, Wireless Telecommunications Bureau (June 20, 1996). Although the Commission must consider the possibility, it is not entirely clear that the market forces discussed above will not encourage cellular carriers to enter into roaming agreements with PCS providers, once the technology for such roaming is available. PCS roaming would provide significant revenues for cellular companies as well as an opportunity to more efficiently utilize existing spectrum.

¹⁷ *See e.g.* Ex Parte Letter from Pacific Telesis to William F. Caton (June 25, 1996).

¹⁸ *Proponents at PCS '96 Push GSM to Highlight Technology's Growth, Capabilities*, Communications Daily (Sept. 20, 1996).

¹⁹ *See Pacific Bell Mobile Services Signs Roaming Agreements With Four GSM-based Carriers*, M2 Presswire (Sept. 19, 1996).

C. The Commission Should Continue To Monitor The Development Of The Wireless Market For Evidence Of Anti-Competitive Conduct By Cellular and Other CMRS Carriers

As discussed above, there is insufficient evidence regarding the current state of the PCS marketplace to justify automatic roaming regulations. As the marketplace develops, however, it may become apparent that some Commission action is necessary to combat discriminatory behavior by the established cellular carriers, as well as other CMRS service providers. The Commission should continue to monitor the CMRS industry to ensure that roaming agreements, where reasonable and necessary, are negotiated in good faith. This approach will allow the CMRS industry the flexibility to develop in the most efficient manner while ensuring that the Commission is able to fashion responses to address specific anti-competition and/or discrimination concerns. Such targeted and informed oversight represents a much more efficient regulatory approach than attempting to divine from the emerging PCS market an appropriate response to a problem that does not exist.

III. CONCLUSION

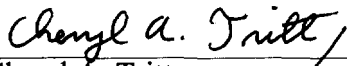
For the foregoing reasons, Sprint PCS respectfully submits that the Commission should refrain, at this time, from imposing unnecessary and potentially burdensome automatic roaming requirements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kimberly E. Thomas, do hereby certify that the foregoing **COMMENTS OF SPRINT SPECTRUM L.P. d/b/a SPRINT PCS** was mailed on this 4th day of October, via first class U.S. mail to the following:

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